HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL No.693 of 2007

Date: 05-11-2007.

Between :

Pothana Siddhaiah.

.....Appellant

And

A.P.State Financial Corporation, Warangal Branch,
rep. by its Senior Branch Manager & others.

.....Respondents.

HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL No.693 of 2007

JUDGMENT : (Per Hon'ble Sri Justice Bilal Nazki)

Heard learned counsel for the parties.

The whole case is in a very short compass. The writ petitioner is a guarantor of respondent No.2. His case was that he received a notice dated 3rd February 2006, in which he was informed that respondent No.2 had failed to clear his liabilities and therefore, the property which was given as security, was being put to auction. He was given 90 days' time to make an offer or a settlement or clear the liability. It was made clear in the notice dated 3rd February 2006 that the petitioner shall be at liberty to give his offer within 90 days and the respondents would accept the tenders and offers up to 09.05.2006. His grievance is that although he received this notice that the offers and tenders would be received for 90 days from 3rd February 2006 and shall be only accepted on 09.05.2006, he was

surprised that a sale had been confirmed in favour of respondent No.4 on 18.03.2006. When we heard the learned counsel for the parties, there was no explanation offered on behalf of Counsel for A.P.State Financial Corporation with regard to the notice dated 3rd February 2006, except saying that they had stated in the notice that petitioner should also refer to an advertisement notice. To appreciate this submission, it is necessary to reproduce the notice dated 3rd February 2006, which reads as under —

"A.P.STATE FINANCIAL CORPORATION
WARANGAL BRANCH
Beside Dist.Central Library
Balasamudram,
Hanamkonda,
Warangal – 506 001.

UNDER CERTIFICATE OF POSTING

LR.NO.AFC/WL/MR&R/2005-06/6281
February 3, 2006

To

Sri Pothana Siddaiah,
S/o.Narayana
D.No.11-1-123,
Industrial Colony,
Warangal.

Sir,
Sub: Publication of collateral security property offered by you for sale – Information – Reg.

With reference to the above, we would like to inform you that due to several defaults committed by your

unit M/S.Nagaraju Industries in repayment of arrears due to the corporation, **Collateral security property offered by you situate at Industrial Colony, published in Eenadu daily on 03.02.2006 sale,** the validity of the above advertisement is 90 days and we accept the tenders/offers upto 09.05.2006 (copy enclosed for reference).

We also inform you that we are incurring huge expenses towards advertisement etc., and expenditure is booked to your loan account the outstanding in the loan account is accumulating day by day. Hence, **we request you to bring the prospective buyers to purchase your collateral security property for better** price. If there is no response from you in scanning a buyer, we will finalise the sale whatever highest price received by us. For the balance outstanding we will be forced to initiate the following action without any further notice.

01. Initiating action under Revenue Recovery Act through Special Deputy Tahsildar and attach movable land immovable properties.
02. We may file Police complaint for the missing of machinery, if and
03. The Corporation is also contemplating to file insolvency petition on the chronic defaulters who are not responding to our letters.

Hence, we request you to bring prospective buyers to sell your collateral security offered by you for better price or come settlement of your loan account.

Yours faithfully,

SENIOR BRANCH MANAGER"

We do not find any force in the submission in the light of the notice, which is unambiguous and clear. It emphatically informs the petitioner that he can make an offer in 90 days with effect from 3rd February 2006 and offers or tenders would be accepted on 09.05.2006. In this view of the matter, whatever may have been contained in the notification which was issued in the newspapers, would not at all be relevant for the purpose of disposal of this case. If the notice and the advertisement in the newspapers both were to the same effect, then the Corporation had no defence, but if the advertisement contradicted the notification served on the petitioner, then it was a case of misleading the petitioner so that the Corporation could sell the property at a throwaway price behind his back.

We have heard learned counsel for respondent No.4, who submits that in pursuance of the sale, he has deposited an amount of Rs.2.45 lakhs some time before. The learned counsel for petitioner submits that the total liability of the borrower was rupees five lakhs, out of which, substantial amounts have been paid either by the petitioner or by the borrower or by another guarantor. His client is prepared to pay the rest of the balance of the total liability within a period of one month from today. Since the auction had been conducted behind the back of the

petitioner, the auction and the subsequent sale has to be set aside and we accordingly set aside the auction and the consequent sale. However, the respondent No.4, who has paid the amounts in pursuance of an auction notice in the newspapers and in whose favour the auction had been confirmed, would be entitled to the amounts he had already paid plus registration charges, with interest at the rate of 6% per annum from the date he paid the amount till the date of realization. The State Financial Corporation is directed to settle his accounts within a period of one month from today. The writ petitioner shall also give an undertaking before the Registrar (Judicial) of this Court that he will liquidate the balance within a period of one month from today. The undertaking shall be given within one week from today.

Appeal is accordingly allowed.

BILAL NAZKI, J

5th November 2007.

RAMESH RANGANATHAN, J

ajr